

DOCKET FILE COPY ORIGINAL
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) WT Docket No. 07-108
JACK R. SHARPLES) FCC File No. 0002185605
Application for New License in the Amateur)
Radio Service)

HEARING DESIGNATION ORDER

Adopted: May 23, 2007

Released: May 24, 2007

By Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this *Hearing Designation Order*, we commence a hearing proceeding before a Commission Administrative Law Judge (ALJ) to determine whether the above-captioned application filed by Jack R. Sharples for a new Amateur Radio Service license should be granted. As discussed below, Sharples is a convicted felon and registered sexual predator. Based on the information before us, we believe that Sharples's actions raise a substantial and material question of fact as to whether he possesses the requisite character qualifications to be a Commission licensee. Because we are unable to make a determination on the record currently before us that grant of Sharples's application for a new amateur license would serve the public interest, convenience, and necessity, we hereby designate the application for hearing, as required by Section 309(e) of the Communications Act of 1934, as amended (the Act).¹

II. BACKGROUND

2. Sharples filed the above-captioned application on June 3, 2005. Information has come to the Commission's attention that Sharples was convicted in 1996 of having violated Section 800.04 of the Florida Statutes (Lewdly Fondle or Assault, Commit or Simulate Sexual Acts on or in Presence of a Child under 16 in a Lewd, Lascivious or Indecent Manner). Sharples also was adjudicated under Section 800.04 in 1999.² In addition, Sharples is identified by the Florida Department of Law Enforcement as a sexual predator.³

III. DISCUSSION

3. Pursuant to Section 309(e) of the Act, the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity.⁴ The character of an applicant is among those factors that the Commission considers in determining whether

¹ 47 U.S.C. § 309(e).

² See <http://offender.fdle.state.fl.us/offender/offenderSearchNav.do> (visited April 2, 2007).

³ *Id.*

⁴ 47 U.S.C. § 309(e).

the applicant has the requisite qualifications to be a Commission licensee.⁵

4. In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, “evidence of any conviction for misconduct constituting a felony.”⁶ The Commission has found that “[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant’s or licensee’s propensity to obey the law” and to conform to provisions of both the Act and the agency’s rules and policies.⁷ In addition, conviction of certain felonies involving egregious misconduct “might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee.”⁸ The Commission has consistently applied these character standards to applicants and licensees in the Amateur Radio Service.⁹ Thus, felony convictions, especially those involving sexual offenses involving children, raise questions regarding an amateur licensee’s qualifications.¹⁰

5. Sharples’s felony conviction for at least one sexual-related offense involving children¹¹ raises material and substantial questions as to whether he possesses the requisite character qualifications to be a Commission licensee. Although Sharples’s felony adjudications occurred more than seven years ago, the nature of his criminal misconduct and the fact the amateur radio service is particularly attractive to children call into serious question whether he should be permitted to obtain an amateur radio authorization. Consequently, we will commence a hearing proceeding before an administrative law judge to provide Sharples with an opportunity to demonstrate whether his above-captioned application should

⁵ See 47 U.S.C. § 308(b); see also Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part I, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252 (1990) (1990 *Character Order*), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992).

⁶ See 1990 *Character Order*, 5 FCC Rcd at 3252 ¶ 4.

⁷ *Id.*

⁸ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000).

⁹ See, e.g., *Schoenbohm v. FCC*, 204 F.3d 243, 246–49 (D.C. Cir. 2000) (affirming the Commission’s denial of an amateur radio operator’s license renewal application based on the licensee’s felony conviction for computer fraud, as well as its lack of candor regarding such conviction); see also Roger Thomas Scaggs, *Order to Show Cause*, 18 FCC Rcd 24367 (EB 2003) (finding that an amateur radio operator licensee’s murder conviction raised a material question of fact regarding his character and qualifications to remain a Commission licensee); Thomas M. Haynie, *Order to Show Cause and Suspension Order*, 7 FCC Rcd 4994 (FOB/PRB 1992), *affirmed and licenses revoked*, *Order of Revocation and Affirmation*, 7 FCC Rcd 7291 (PRB 1992) (revoking general radiotelephone operator, amateur advanced class radio and amateur radio station licenses on the basis of licensee’s felony conviction for intentional interference with satellite communications); Jerry E. Gastil, *Order to Show Cause*, 4 FCC Rcd 3977 (PRB/FOB 1989) (finding that a general radio operator and amateur radio station licensee’s felony conviction for interfering with governmental radio communications raised serious questions regarding his character and qualifications to remain a Commission licensee).

¹⁰ See David L. Titus, *Order to Show Cause*, 22 FCC Rcd 1638 (EB 2007) (designating amateur radio operator’s license for revocation based on licensee’s felony conviction for communicating with a minor for immoral purposes); Robert D. Landis, *Order To Show Cause*, 21 FCC Rcd 8741 (EB 2006) (designating amateur radio operator’s license for revocation based on licensee’s felony conviction for child molestation); George E. Rodgers, *Hearing Designation Order*, 10 FCC Rcd 3978 (WTB 1995) (finding that an amateur radio operator licensee’s felony conviction for indecent assault upon and corruption of minors raised a material question of fact regarding his character and qualifications to remain a Commission licensee).

¹¹ The facts of Sharples’s 1996 and 1999 felony adjudications, as well as any other felonies of which he may have been convicted, are *res judicata* and shall not be retried in this hearing.

be granted.

IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the captioned application IS DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent *Order*, upon the following issues:

- a) To determine the effect of Jack R. Sharples's felony adjudication(s) on his qualifications to be licensed by the Commission.
- b) In light of the evidence adduced pursuant to the foregoing issue, to determine whether Jack R. Sharples is qualified to be a Commission licensee.
- c) In light of the evidence adduced pursuant to the foregoing issues, to determine whether the captioned application filed by Jack R. Sharples should be granted.

7. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), in order to avail himself of the opportunity to be heard, Jack R. Sharples, in person or by his attorney, SHALL FILE with the Commission, within twenty days of the mailing of this *Hearing Designation Order* to him, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

8. IT IS FURTHER ORDERED that, pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), if Jack R. Sharples fails to file a written appearance within the twenty-day period, or has not filed prior to the expiration of the twenty-day period, a petition to dismiss without prejudice, or a petition to accept, for good cause shown, a written appearance beyond the expiration of the twenty-day period, the Presiding Administrative Law Judge SHALL DISMISS the captioned application with prejudice for failure to prosecute.

9. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

10. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(e), the burden of proceeding with the introduction of evidence and the burden of proof with respect to all of the issues specified above SHALL BE on Jack R. Sharples.

11. IT IS FURTHER ORDERED that a copy of this *Hearing Designation Order* or a summary thereof SHALL BE PUBLISHED in the Federal Register.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau